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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,) Case No.: 14CR0344-MMA
11)
12 Plaintiff,) FINDINGS AND RECOMMENDATION
13 v.) OF THE MAGISTRATE JUDGE
14) UPON A PLEA OF GUILTY
15)
16 ERNESTO ENCINAS (1),)
17)
18)
19 Defendant.)

20
21 Upon Defendant's request to enter a guilty plea to
22 Counts One and Two of the Information pursuant to Rule
23 11 of the Federal Rules of Criminal Procedure, this
24 matter was referred to the Magistrate Judge by the
25 District Judge, with the written consents of the
26 Defendant, counsel for the Defendant, and counsel for
27 the United States.

28
29 Thereafter, the matter came on for a hearing on
30 Defendant's guilty plea, in full compliance with Rule
31 11, Federal Rules of Criminal Procedure, before the
32 Magistrate Judge, in open court and on the record.

1 In consideration of that hearing and the allocution
2 made by the Defendant under oath on the record and in
3 the presence of counsel, and the remarks of the
4 Assistant United States Attorney,

5 **I make the following FINDINGS - that the Defendant**
6 **understands:**

- 7 1. The government's right, in a prosecution for
8 perjury or false statement, to use against the
9 defendant any statement that the defendant
10 gives under oath;
- 11 2. The right to persist in a plea of "not guilty";
- 12 3. The right to a speedy and public trial;
- 13 4. The right to trial by jury, or the ability to
14 waive that right and have a judge try the case
15 without a jury;
- 16 5. The right to be represented by counsel-and if
17 necessary to have the court appoint counsel-at
18 trial and at every other stage of the
19 proceeding;
- 20 6. The right at trial to confront and cross-
21 examine adverse witnesses, to be protected from
22 compelled self-incrimination, to testify and
23 present evidence, and to compel the attendance
24 of witnesses;

- 1 7. The defendant's waiver of these trial rights if
2 the court accepts a guilty plea or nolo
3 contendere;
- 4 8. The nature of each charge to which the
5 defendant is pleading;
- 6 9. Any maximum possible penalty, including
7 imprisonment, fine, and term of supervised
8 release;
- 9 10. Any applicable mandatory minimum penalty;
- 10 11. Any applicable forfeiture;
- 11 12. The court's authority to order restitution;
- 12 13. The court's obligation to impose a special
13 assessment;
- 14 14. In determining a sentence, the court's
15 obligation to calculate the applicable
16 sentencing guideline range and to consider that
17 range, possible departures under the Sentencing
18 Guidelines, and other sentencing factors under
19 18 U.S.C § 3553(a);
- 20 15. The term of any plea agreement and any
21 provision in that agreement that waives the
22 right to appeal or to collaterally attack the
23 conviction and sentence; and
24 and
25 and
26 and
27 and
28 and

1 16. That, if convicted, a defendant who is not a
2 United States citizen may be removed from the
3 United States, denied citizenship, and denied
4 admission to the United States in the future.

5 **I further find that:**
6

7 17. The defendant is competent to enter a plea;

8 18. The defendant's guilty plea is made knowingly
9 and voluntarily, and did not result from force,
10 threats or promises (other than those made in a
11 plea agreement); and
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13 19. There is a factual basis for Defendant's plea.

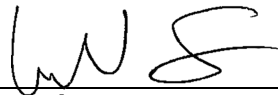
14 **I therefore RECOMMEND that the District Judge**
15 **accept the Defendant's guilty plea to Counts One and**
16 **Two of the Information.**

17 The sentencing hearing will be before United States
18 **District Judge Michael M. Anello, on 6/9/2014 at 9:00**
19 **AM.** The court excludes time from 3/18/2014 through
20 6/9/2014 pursuant to 18 USC § 3161(h)(1)(G) on the
21 ground that the District Judge will be considering the
22 proposed plea agreement.
23

24 Objections to these Findings and Recommendations
25 are waived by the parties if not made within 14 days of
26 this order. If the parties waive the preparation of the
27
28

1 Presentence Report, objections are due within three
2 days of this order.

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4 Dated: 3/18/2014

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6 **Hon. William V. Gallo**
7 United States Magistrate Judge
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9 Copies to:
10 Judge Michael M. Anello
11 Assistant United States Attorney
12 Counsel for Defendant
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